

COMMITTEE STATEMENT

LB 585

HEARING DATE: 2/8/99

COMMITTEE ON: Transportation

TITLE: (Bromm) Change provisions for driving under the influence and vehicle impoundment

ROLL CALL VOTE – FINAL COMMITTEE ACTION

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

8	Yes	Senators Bromm, Hudkins, Thompson, Janssen, Jones, Dw. Pedersen, C. Peterson, Baker
	No	
	Present, not voting	
	Absent	

PROPOSERS

Roselyn Cappiello
John Craig
Timothy Hrbek, Sr.
Diane Riibe
Kevin Stukenholtz
Timothy Hrbek
Paul Childers
Terry King

REPRESENTING

MADD NE
NE Dept. of Roads
Bellevue Police Dept.

NE State Patrol
Bellevue Police Dept.
MADD NE
NE Chapter Assoc. General Contractors

OPPOSERS

Susan Cook

REPRESENTING

NE Criminal Defense Attorneys

NEUTRAL

Judy Craig

REPRESENTING

NHTSA

SUMMARY OF PURPOSE AND/OR CHANGES:

The bill increases penalties for repeat-D.U.I. offenders and adds a provision to give courts the power to impound the motor vehicles of repeat-D.U.I. offenders, within the Nebraska Rules of the Road. *The bill is significantly changed by the committee amendment.*

COMMITTEE STATEMENT

1. The federal government mandated increased penalties for D.U.I. repeat-offenders. The following changes are made to § 60-6,196 (the D.U.I. section).
 - (1) In subsection (2)(b), governing second offense D.U.I. convictions:
 - (a) a provision is added which adds a mandatory impoundment of all motor vehicles owned by the offender convicted of a 2nd offense, if the offender is not given probation;
 - (b) If the offender is given probation, the mandatory minimum jail sentence is increased to five days, a new provision allowing a minimum of 240 hours of community service is added, and the court is given permissive authority to impound the motor vehicles owned by the offender.
 - (c) Other penalties remain unchanged.
 - (2) In subsection (2)(c), governing third offense D.U.I. convictions:
 - (a) a provision is added which adds a mandatory impoundment of all motor vehicles owned by the offender convicted of a 3rd offense, if the offender is not given probation;
 - (b) If the offender is given probation, the mandatory minimum jail sentence is increased to ten days, a new provision allowing a minimum of 480 hours of community service is added, and the court is given permissive authority to impound the motor vehicles owned by the offender.
 - (c) Other penalties remain unchanged.
 - (3) In subsection (2)(d), governing fourth offense D.U.I. convictions:
 - (a) if the offender is not given probation, a provision is added which adds a mandatory impoundment of all motor vehicles owned by the offender convicted of a 4th offense and a mandatory minimum sentence of ten days in jail is added;
 - (b) If the offender is given probation, the mandatory minimum jail sentence is increased to ten days, a new provision allowing a minimum of 480 hours of community service is added, and the court is given permissive authority to impound the motor vehicles owned by the offender.
 - (c) Other penalties remain unchanged.
 - (4) In subsection (8) of § 60-6,196, language is added which allows courts to order alcohol evaluations after any conviction for D.U.I.
2. The federal government mandated increased penalties for D.U.I. repeat-offenders. The following changes are made to § 60-6,197 (the Refusal of a Chemical Test provisions).
 - (1) In subsection (2)(b), governing second offense Refusal convictions:
 - (a) a provision is added which adds a mandatory impoundment of all motor vehicles owned by the offender convicted of a 2nd offense, if the offender is not given probation;
 - (b) If the offender is given probation, the mandatory minimum jail sentence is increased to five days, a new provision allowing a minimum of 240 hours of community service is added, and the court is given permissive authority to impound the motor vehicles owned by the offender.
 - (c) Other penalties remain unchanged.
 - (2) In subsection (2)(c), governing third offense Refusal convictions:
 - (a) a provision is added which adds a mandatory impoundment of all motor vehicles owned by the offender convicted of a 3rd offense, if the offender is not given probation;
 - (b) If the offender is given probation, the mandatory minimum jail sentence is increased to ten days, a new provision allowing a minimum of 480 hours of community service is added, and the court is given permissive authority to impound the motor vehicles owned by the offender.

COMMITTEE STATEMENT

- (c) Other penalties remain unchanged.
- (3) In subsection (2)(d), governing fourth offense Refusal convictions:
 - (a) if the offender is not given probation, a provision is added which adds a mandatory impoundment of all motor vehicles owned by the offender convicted of a 4th offense and a mandatory minimum sentence of ten days in jail is added;
 - (b) If the offender is given probation, the mandatory minimum jail sentence is increased to ten days, a new provision allowing a minimum of 480 hours of community service is added, and the court is given permissive authority to impound the motor vehicles owned by the offender.
 - (c) Other penalties remain unchanged.
- 3. A new provision governing the impoundment of vehicles owned by persons convicted of a second or subsequent violation of §§ 60-6,196 or 60-6,197. The impoundment may last up to 1 year, or the length of the offender's other sentences, whichever is longer. The court may use the installation of an ignition interlock device as an alternative to impoundment. The court is given the discretion to release the impounded vehicles to anyone if such an ignition interlock device is installed, and to the holder of a bona fide lien, for purposes of foreclosure and satisfying the lien. The person towing and storing the vehicle is given a lien and the right to retain the motor vehicle until the lien is paid.

EXPLANATION OF COMMITTEE AMENDMENTS

The committee amendments add several provisions to the bill, adding other provisions concerning highway safety. The committee amendments also change the manner in which the motor vehicles of repeat-drunk drivers are handled. This explanation will first note the added sections that are introduced into the bill, and then provide an explanation of the changes to the manner in which the motor vehicles of repeat-offenders are treated.

Provisions Added to the Bill:

- A) Those provisions dealing with open containers of alcoholic beverages as a federal mandate are included. *These provisions were originally found in LB 445 and in LB 586:*
 - (1) Language, later incorporated into this amendment, is stricken from § 53-186. The language refers to the consumption of alcohol on public roads and within motor vehicles that are located on the public roads.
 - (2) New language, mandated by the federal "TEA-21" highway-funding bill, is added to Nebraska statutes. In addition to the current public consumption of alcohol provisions, the following new provisions are added:
 - (a) The term "open alcoholic beverage container" is defined.
 - (b) It is made unlawful for any person in the passenger compartment of a motor vehicle to possess an open alcoholic beverage container while on the highways or public parking areas of Nebraska.
 - (c) Federally-mandated exemptions to this provision are provided for:
 - (i) Passengers in commercially-operated motor vehicles (such as busses or taxis);
 - (ii) Passengers in self-propelled mobile homes or cabin trailers.

COMMITTEE STATEMENT

- B) New fines are added to § 60-682.01. *This provision was originally found in LB 16.* The fine schedule for speeding violations on Nebraska interstates changes as follows:

<i>Speed in excess of the Speed Limit</i>	<i>Fine</i>
1 – 5 m.p.h.	\$ 50
6 – 10 m.p.h.	\$ 100
11 – 15 m.p.h.	\$ 150
16 – 20 m.p.h.	\$ 200
21 m.p.h. or higher	\$ 300

- C) In § 60-4,182, which governs the assessment of points against a driver's license, provisions regarding point to be assessed for speeding violations on the Interstate and the state expressway system are stricken. Under the bill, all speeding violations would be assessed point on the same scale, regardless of the location or speed limit of the highway on which the speeding occurred. *This provision was originally found in LB 445.*

Provisions in the Bill that are Changed:

The bill originally contained a two-tier system of treating the motor vehicles of a repeat-offender convicted of a violation of either § 60-6,196 or § 60-6,197. If the offender did not receive probation, the offender's motor vehicles were given mandatory impoundments for a period not to exceed one year or the length of their sentence, whichever was longer. If the offender received probation, then the court had the discretion to impose such an impoundment, but was not obligated to impose such an impoundment. The amendment changes the provisions of the bill in several ways:

- 1) Vehicles are no longer impounded, but are instead "immobilized," which is defined as:
 - (a) The removal or impoundment of the vehicle or the rendering inoperable of such a motor vehicle: or
 - (b) The revocation or suspension of the motor vehicle's registration, including license plates.
 - (c) The choice of the method of immobilization is at the discretion of the court.
- 2) The imposition of "immobilization" is now mandatory, regardless of whether the repeat-offender receives probation.
- 3) The "immobilization" time is changed so that it must now be for a period of not less than 5 days nor more than 1 year.

Senator